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EXAMINER
KENDALL, CHUCK O

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 January 2008</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>31 March 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

1.   This action is in response to the application filed 01/25/08.

2.   Claims 1 – 28 have been amended.

Claim Rejections - 35 USC § 101

3.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim language draws limitations to a system of software per se. Software per se claims are not considered statutory subject matter.

Claims 15 – 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim language draws limitations to a computer readable medium. However Applicants defines in his specification that the program code can be embodied on a transmission type medium. Mediums which include transmission type mediums that involve the transmission of signals or other forms of energy are not considered statutory and as such claims are drawn to non statutory subject matter.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Cebula et al. US 2004/015830 A1 in view of Duggan et al. USPN 6,002,871.

Regarding claims 1 and 15, Cebula discloses a system for multi-environment

testing automation comprising:

a Test Store in which a at least one Test is stored [0024];

a test Driver that interprets said Test Document to execute at least one Test

described by said Test Document (FIG. 5, 506, 508, translator for interprets).

Cebula doesn't expressly disclose a test Document that describes multi-threaded

Test that can be concurrently executed in at least two testing environment.

However, Duggan in an analogous art and similar configuration of testing

discloses that, " the core module comprises instructions that cause the single computer

on which the *test tool program* is running to execute *concurrently, on each of a plurality*

of different client connections to the application program under test, a series of

command module commands specified by name in a test script...", (3:20 – 30).

Therefore it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine Cebula and Duggan because, it would enable

running the tests on different applications as prescribed by the test script as taught by

Duggan above.

Regarding claims 2 and 16, the system of claim 1 wherein said one Test that is

described by said Test Document can

be executed in an HTTP environment and one additional environment [Cebula, 0125,

see internet].

Regarding claims 4 and 18, the system of claim 1 further comprising at least one

Execution Variable corresponding to said test and comprising data that does not

comprise data in said Test [Cebula, 0006].

Regarding claims 5 and 19, the system of claim 1 further comprising a Test

Editor for authoring a Test Document [Cebula, 0081].

Regarding claims 6 and 20 , the system of claim 1 further comprising a Test

Transform that would transform an existing Test in a first Test Document into a new

Test in a second Test Document [Cebula, 0076, show editing tests].

Regarding claims 7 and 21, system for executing Tests, said Tests comprising at least one Task where each of said at least one Task comprises at least one Step, said system comprising:

an Executor subsystem that executes at least one Step and generates at least one Execution Result [Cebula, 0091]; and

a Verifier for comparing at least one Execution Result to at least one Expected Result [Cebula, 0108, unit testing verification, also see 0021].

Regarding claims 8 and 22, the system of claim 7 further comprising a Filter for filtering at least one Execution Result generated by said Executor before said at least one Execution Result is compared by said Verifier of said at least one Expected Result [Cebula, 0021].

Regarding claims 9 and 23, a method of testing automation in a plurality of environments, said method comprising:

grouping at least one Test into a Test Store, said Test Store comprising data pertaining to Tests it contains, said Test being able to be executed in at least two environments (Cebula, FIG. 3, see test suite);

describing a nature of at least one Test in at least one Test Document, wherein said nature comprises information regarding a means for verifying a result derived from said Test and a description of what constitutes a correct results for said Test [Cebula, 0108, 0021];

interpreting at least one Test Documents to execute at least one Test verifying

whether said at least one Test passes or fails (Cebula, FIG. 5, 506, 508).

Cebula doesn't expressly disclose a test Document that describes multi-threaded

Test that can be concurrently executed in at least two testing environment.

However, Duggan in an analogous art and similar configuration of testing

discloses that, " the core module comprises instructions that cause the single computer

on which the *test tool program* is running to execute *concurrently, on each of a plurality*

of different client connections to the application program under test, a series of

command module commands specified by name in a test script...", (3:20 – 30).

Therefore it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine Cebula and Duggan because, it would enable

running the tests on different applications as prescribed by the test script as taught by

Duggan above.

Regarding claims 10 and 24, the method of claim 9 further comprising the

utilization least one Execution Variable corresponding to said Test and comprising data

that does not comprise data in said Test [Cebula, 0006].

Regarding claims 11 and 25, the method of claim 9 further comprising

transforming a Test in a first Test Document into a new Test for a second Test

Document [Cebula, 0076, show editing tests].

Regarding claims 12 and 26, the method of claim 9 wherein said Test Store is

implemented as an abstraction that allows a plurality of Test Documents to be stored in

at least two different formats (Cebula, 0037).

Regarding claims 13 and 27, the method of claim 9 wherein said Test Store

further comprises functionality for browsing, saving, and retrieving a Test Document

(Cebula, 0107).

Regarding claims 14 and 28, the method of claim 9 wherein an organization of

Tests in a Store Test is automatically updated based on at least one criteria from among

the following plurality of criteria: the manner in which one or more Tests are executed;

the frequency in which one or more Tests are executed (Cebula, 0100);

and

the most common environment in which one or more Tests are executed

(Cebula, 0076).

6. Claims 3 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cebula et al. US 2004/015830 A1 in view of Duggan et al. USPN 6,002,871 as applied in claims 1 and 15 in view of Melamed et al. US 2007/0107415.

Regarding claims 3 and 17, Cebula as modified discloses all the claimed limiations as applied in claims 1 and 15 above. The combination of Cebula and Duggan doesn't expressly disclose the system of claim 1 wherein said one Test that is described by said Test Document can be executed in a SQL environment and one additional environment. However, Melamand in an analogous art and similar configuration discloses using SQL to gather input into the database (0075). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Cebula, Duggan and Melamed because using SQL in the art with databases is an industry standard and it would enable interacting with the database.

Response to Arguments

7. Applicant's arguments with respect to claims 1 – 28 are have been considered but are moot in view of the new ground(s) of rejection.

With regards to current amendments in independent claims, see newly cited prior art Duggan.

Conclusion

8.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-2723698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-2723695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

/Chuck O Kendall/
Primary Examiner, Art Unit 2192